To show the advantages of using private contractors to perform survey and makeready work, the Petitioner cited the testimony of Richard L. Jackson, President of Jackson Communications Corporation (Jackson).[17/] It was pointed out that a survey conducted by Jackson would cost CATV less than if done by NYT, that Jackson's procedures are more efficient, and that Jackson would be motivated to examine alternatives in order to avoid or eliminate makeready work while NYT has no such incentive. Aside from offering a cost advantage for surveys and makeready work, the Petitioner contended that the use of a contractor such as Jackson would eliminate makeready delays as well as offering savings in construction and the cost of removal of CATV facilities. It was pointed out that Jackson has already performed surveys and other work for telephone companies including NYT.

The Association completed its argument by stating its belief that this record reflects a compelling need for the exercise of jurisdiction over the terms and conditions of pole attachment agreements.

Answer of NYT

At the outset of its answering brief, NYT stated that utility practices over the past 20 years have contributed greatly to the growth of CATV. It was noted that CATV companies have full

17/ Witness Jackson also testified that it would be better construction policy to permit CATV to use NYT guys and anchors where unused capacity exists.

access to utility poles, and that if new pole plant had been required, CATV could not have developed nearly to the extent that it has. NYT has argued that its pole attachment practices are reasonably required to ensure the adequacy of its service, safety for the public and company employees, and to avoid additional financial burdens on ratepayers. While NYT is willing to share its poles with CATV, it is willing to do so only in a manner that is consistent with those obligations.

With respect to the contention that there are delays in the completion of makeready work, NYT stated that it gives the same consideration to and establishes the same priorities for CATV make-ready work as for regular telephone work. NYT felt, however, that it must give the highest priority to urgent telephone work for to do otherwise might well result in a failure to meet the Company's statutory obligation to provide adequate telephone service. With respect to the complaint that NYT refuses to agree to deliver licenses for a specified number of poles within a specified period of time, the Company noted that Association Witness Jackson would not make such a commitment until after a survey has been completed and there has been an opportunity to review the extent of the work involved. Citing examples, NYT argued that it has met extraordinary demands of CATV operators, that delays have been very few, and where there were delays they occurred during or shortly after NYT's strike of 1971-72 for the most part. Thereafter, NYT cited specific examples of delay testified to by Association witnesses for which the Company claimed there were ample mitigating circumstances.

Turning to the cost of surveys and makeready work, NYT contended that the cost for that work is reasonable, that the work is done efficiently, and that the charges properly reflect the number of hours devoted to that work. With respect to the loading of labor rates, NYT stated that these rates contain no element of profit, and that they are the same rates used for its public service activities. It was argued that the Company is entitled to a profit, and that 10 percent is within a reasonable range of what would be expected by contractors performing comparable work.18/

With respect to advance payments, the Company has argued that this policy is necessary to protect ratepayers from additional financial burdens. Without being able to receive advance payments, NYT would have to commit its own funds to this work. The effect would be to increase borrowing and other money costs to NYT. It was argued this would impose a financial burden on telephone ratepayers which burden should properly be borne by the CATV company whose attachment request necessitated the work. Citing certain exhibits of record, NYT stated that the accuracy rates of its estimates are quite high.

NYT has further maintained that cost data is available to CATV operators. It was noted that there are one or two cases shown in the record where CWO's were not provided, but even in those cases the data was not denied to the CATV operators. It was further noted that NYT field personnel have been directed to provide CATV operators with copies of CWO's when requested. In response to the complaint that the CWO's do not specify the work to be performed on each

18/ In effect, the Company has argued that it is entitled to a reasonable profit which is represented only by the 10 percent added to the loaded labor rates.

individual pole, NYT has noted that the Association nowhere expressed any willingness to bear the added costs of compiling and recording this information on an individual pole basis. The Company believes that if CATV operators desire any further information, they can send their own representatives on the surveys.

In response to the Association's charge that CATV operators are paying for corrections to NYT's plant, the Company has countered by stating not a single instance has been shown where this has occurred. NYT referred to rebuttal testimony submitted by an Association witness, to the effect, that his company was being charged for the cost of replacing nine poles which required replacement due to utility violations and without regard to the CATV attachment. The Company stated that the witness was incorrect with respect to eight poles, and as to the ninth an adjustment was made before the work had been performed so no cost penalty was incurred. As to pole replacement practices, NYT has noted that its policy is to charge the CATV operator for replacements if that replacement would not be required but for the new CATV attachment. From a telephone service point of view the replacement is unnecessary and NYT does not benefit from it. Replacing a pole with a higher one is of no value to NYT, and the fact that the pole is a new one is also of no value to NYT. Few poles remain in place for their full service life. For these reasons NYT believes that its practices and policies are fully justified.

Furthermore, replacement is infrequent; only about .05 percent of the poles surveyed are replaced. With respect to depreciation,19/ an allowance to CATV on pole change-outs would increase NYT's needs for capital and increase rate base without a contribution toward return. Such an allowance would burden ratepayers from NYT's point of view.

Turning to its policies with respect to the use of private contractors, NYT argued that these policies should not be changed because CATV operators have no real grievances with respect to delay and NYT doubts that the use of such contractors would be a cost advantage as claimed by the Association. Furthermore, it is argued, the use of such contractors would remove the utility's control over the adequacy of its service. Citing the testimony of Association Witness Jackson, to the effect, that he would find the least expensive makeready alternative for the CATV company, NYT has contended that the loyalty of such contractors would run to the CATV operators. NYT stated that it also seeks out the least expensive method, but only in a manner to ensure the integrity of its own plant. Proceeding by example, NYT has argued that some cables are old and the sheaths may have begun to crystalize. Such cables must be handled very carefully or the sheaths can develop small cracks allowing moisture to enter. This kind of damage is often not immediately apparent and frequently not discovered until sometime in the future when a service outage or

19/ The Petitioner complained that CATV is not given a depreciation allowance on the change-out of an old pole, whereas, such an allowance is given after vehicular damage to a pole.

other problem occurs. NYT fears that a private contractor looking for a way to save money for the CATV operator may not take the time needed for careful handling, particularly, if damage is not likely to become known until some future time. Citing the concerns expressed by CCTV in its order of October 2, 1975, Case 90066, NYT argued that there is ample reason to question the quality of CATV plant construction being undertaken by private contractors in New York State. As its final point on the question of the use of private contractors, the Company stated that requiring the use of such contractors could very likely lead to costly labor difficulties for NYT.

With respect to its inspection policies NYT has argued that inspections are essential for ensuring the adequacy of service and the safety of employees. As a matter of policy, NYT conducts a post-construction inspection of CATV plant and a periodic inspection, i.e., once per year, of the licensee's entire system. Further inspections are made when circumstances indicate that violations exist. NYT argued that the Association's charge, to the effect, that inspections are used to punish CATV is based on speculation and suspicion and not on fact. The Company urged that inspections reveal violations which must be corrected or employee safety and the integrity of plant will be threatened. As to inspections revealing utility violations, NYT pointed out that inspections would not be necessary but for CATV's presence. NYT does not make specific periodic inspections of its own plant, but relies on the continuing day-to-day observations of its employees who perform cable plant work and who have prescribed inspection procedures to follow.

As to the testimony of Association Witness Wilson who conducted a random survey of certain NYT downstate plant, NYT wondered whether the import of that testimony was to show that because it was possible to find violations on NYT's plant then CATV should also be allowed to have violations on its plant. Furthermore, the Company argued that Witness Wilson's findings have in no way been shown to be typical of NYT's plant nor have they been shown to be representative of the communities involved. It was further argued that this witness did not attempt to familiarize himself with matters such as power company voltages in the area which would be significant in the context of the numerous clearance, bonding and grounding violations that were reported.

In the area of guying and anchoring and right-of-way practices NYT has argued that its policies are necessary to prevent the imposition of an unfair financial burden on its ratepayers. NYT asserted that since the Association has complained about the high cost of utility-provided work, guying and anchoring by the utilities at those costs would not be advocated unless there were a purpose. The purpose, NYT asserted, is to avoid the costs and difficulty of obtaining rights-of-way. The Company argued that it does not need the right-of-way, and it should not have to bear the cost of obtaining rights-of-way for the CATV operator. NYT further argued that good relations with property owners are needed so that construction of telephone plant will not be needlessly obstructed. It is for this reason, NYT

contended, that it has consistently followed a policy of contacting property owners to explain any plans, maintenance or construction work even in those situations where NYT already has a clear legal right to perform the planned work. It was further argued that the Company's policy contrasts sharply with the practice of some CATV operators who do not contact or obtain permission from property owners in advance of attachment and respond only when complaints are received, usually during or subsequent to attachment. The ill will frequently engendered by this practice invariably affects the utility.

NYT's present policy is to place full responsibility on CATV operators for acquiring their own rights-of-way. It was stated that NYT did guying and anchoring work on CATV's behalf in the past, but the Company has ceased that practice because of difficulties with property owners. It was further stated that the reversal of the former policy was well prior to the present proceeding and was not in retaliation against CATV operators or the Association.

NYT believes that the holding in the Hoffman cases, supra, does not provide an answer to right-of-way problems. Sharing easement rights with CATV operators is inconsistent with representations often made to property owners when the utilities obtained easements. Also, Hoffman does not address the situation where the Company has no easement rights to share such as in the case where the utility only has oral permission. NYT does not ascertain its rights over any

given parcel of private property at the time a pole license is issued. To do so would require additional administrative effort and the involvement of attorneys. Regardless of the status of utility rights over the property involved, NYT urged that CATV operators should be required to obtain their own permission from property owners and that CATV should be required to do so well in advance of attachment.

NYT responded to a number of matters regarded as miscellaneous and not addressed in depth by Association witnesses. Very briefly, NYT's responses were as follows:

1. With respect to the Association's criticism that NYT is unwilling to negotiate agreements with each CATV operator individually, the Company responded that one contract form is necessary to avoid claims of discrimination, and because variations would increase administrative burdens.

2. As to the practice of charging CATV operators for makeready work required subsequent to the CATV attachment, NYT argued that this practice benefits CATV for without it the Company would be required to make a more comprehensive projection of needs initially. This could result in greater makeready costs and a greater number of pole replacements.

3. In response to the Petitioner's claim that NYT's underground agreement contains the same vices as its pole attachment agreement, NYT argued that the underground agreement is like the pole attachment agreement to the extent that it secures the integrity

of telephone service, the safety of employees and prevents an undue financial burden on telephone ratepayers. It was further argued that there are more restrictions accommodating licensees in conduits. There is a limitation on the ability to rearrange facilities, and, to this extent, undergrounding is not analogous to pole attachments. It was argued that the rights NYT retains under the underground agreement to recover duct space licensed to others is particularly important given the substantial lead time and capital expenditure involved in adding additional duct space. The Company pointed out that there are no environmental or similar concerns that impede CATV operators from constructing and maintaining their own underground plant. NYT urged that they choose not to do so because of reluctance to expend the capital necessary to establish such systems.

4. With respect to the Petitioner's objection that a CATV operator's attachment is made subject to the needs of joint utility users, NYT argued that the record shows no instance of a CATV operator having been prejudiced by this fact.

5. In those infrequent cases where NYT does employ the use of an independent contractor, billing is done on the basis of NYT's own loaded hourly rates and the Association raised issue with this practice. In response, NYT stated that there are numerous administrative functions that it must perform in connection with the issuance of licenses regardless of who performs survey and makeready work. In the Company's opinion, merely to pass along the contractor's charges would require utility ratepayers to absorb these administrative costs.

6. With reference to the fact that the pole attachment agreement used by NYT provides an option for cancelling a license if attachment is not made within 90 days of the date of the issuance, NYT stated that this provision prevents it from becoming embroiled in disputes between competing CATV operators. Without it, the Company urged, one CATV operator could apply for a license not for the purpose of attachment, but to impose greater makeready costs on a later applicant. NYT stated that it has never invoked this provision.

7. As to the other termination provisions appearing in the pole attachment agreement, NYT argued that they are fair, reasonable and appear in many comparable contracts. Furthermore, NYT contended, the Association failed to show a single instance where termination rights were invoked unfairly or arbitrarily.

8. In NYT's view, the submission of attachment disputes to arbitration could prevent the Company from meeting its statutory obligations to ensure the adequacy of its telephone service and the safety of its employees.

9. While the term of CATV pole attachment agreements is being reduced from five years to one year, NYT stated that the term for municipal agreements also will be reduced to one year at the same time.

10. NYT argued that there is no evidence of record to support the Petitioner's contention that the specifications in Appendix 2 of the pole attachment agreement are "sketchy and inadequate."

While the Association advocated monthly billing for pole attachment fees, NYT argued that this procedure would add significantly to the cost of billing.

11. With respect to the Petitioner's objection to transfers of NYT's field personnel, the Company stated that such changes are made to assure the most effective possible work force, capable of providing adequate service in the least expensive manner. NYT then argued that the Association's attempt to place its interests ahead of these considerations is illustrative of its disregard of the impact of its demands on telephone subscribers.

Finally, NYT responded to the Association's claim that the Company is motivated by anti-competitive considerations. Stating that there is no evidence in the record to support this claim, NYT argued that it cannot have the motivation alleged because it does not compete with CATV systems. With respect to channel distribution systems, NYT stated that it is actively engaged in selling these systems and all but two have been sold. NYT urged that the mere ownership of poles cannot support the anti-competitive allegation. NYT took the position that the ability to use utility poles has been a great benefit to CATV operators.

Answer of Niagara Mohawk

In its introductory remarks Niagara Mohawk stated that it is willing to share pole plant and underground facilities with CATV provided only that CATV assumes any cost and contingent

responsibilities that would not otherwise arise but for CATV's presence and utilization of these facilities. Niagara Mohawk observed that CATV understandably wishes to pursue its business at a minimum of cost, but in so doing it has sought to impose upon utility ratepayers many of the costs that rightfully belong to CATV. Niagara Mohawk stated that the Association's demands entirely ignore the fact that CATV has been spared investment in the very pole plant vital to its operation. CATV seeks rights and benefits in that pole plant that the joint owners do not obtain from each other.

Turning to the specific charges raised by the Association, Niagara Mohawk argued that the allegation that Niagara Mohawk overcharges for makeready work is unwarranted. In the case where overbilling was charged, Niagara Mohawk noted that there was no security by way of advance payment or deposit and that the billing error was discovered before any payment was tendered by the CATV operator to Niagara Mohawk. Referring to testimony relating to this incident, Niagara Mohawk urged that there had been no overcharge in fact and that the CATV company involved earned no refund entitlement as a consequence of the incident.

Niagara Mohawk argued that any charge of delay in its completion of makeready work is unsupported by the record. Citing the testimony of its own witness, Niagara Mohawk noted that if any delays occurred in the Albany area they were of a casual nature,

prompted by a high incidence of CATV attachments and did not represent a general pattern of conduct. After referring to the testimony of several Association witnesses, it was pointed out that none testified to delays in makeready work by Niagara Mohawk.

Turning to the various provisions appearing in pole attachment agreements, Niagara Mohawk urged rejection of the Petitioner's request that terms or conditions should be modified or deleted. The Association's request for modification or deletion of anti-competitive provisions ignores the fact that no electric company has ever offered CATV service. The Association singled out as objectionable the 90-day termination clause which appears in Niagara Mohawk's pole attachment agreement. In response, it was urged that few agreements exist in the business world without some mechanism permitting their termination. Niagara Mohawk cited several reasons which justify the retention of a termination clause including the enforcement of attachment rental payments, maintaining clearances to ensure maximum safety, the removal of unauthorized attachments by competing CATV systems, and the removal of attachments should a CATV system fail. Niagara Mohawk noted that the Association has made no claim that a termination clause has been arbitrarily enforced. Niagara Mohawk also argued that the record is completely devoid of any evidence that the termination clause has operated to CATV's prejudice.

Niagara Mohawk further argued that if certain complaints against NYT were upheld, the result would prejudice Niagara Mohawk. There are many CATV attachments to jointly-owned poles and a decision affecting one of the joint owners must necessarily affect the other. Acknowledging that there are differences between its policies and those of NYT, Niagara Mohawk urged that these differences should not determine the propriety of the manner in which NYT deals with CATV attachments. It was maintained that NYT's greater experience and more frequent encounters with problems relating to third-party licensees lends credibility to NYT's practices and policies.

With respect to guying and anchoring problems, Niagara Mohawk stated that its policy is that CATV can attach to a Niagara Mohawk anchor for a one-time fee if capacity exists. If no capacity exists, the CATV operator must install his own anchor. As to the related right-of-way issue, Niagara Mohawk believes that utilities should not be expected to obtain rights-of-way for CATV operators. Addressing the Hoffman holding, Niagara Mohawk feared that the implications of that case will make the acquisition of easements by utilities difficult, costly or impossible. If easements can be apportioned, then it will no longer be possible to obtain easements for a nominal consideration.

With respect to makeready work performed after a CATV attachment has been made, Niagara Mohawk argued that each party should pay its own transfer costs. Niagara Mohawk noted that there are a number of factors other than utility needs that could, and frequently do, necessitate facility transfers.

Finally, Niagara Mohawk referred to the Association contention that NYT uses inspection procedures to inspect its own plant and the assertion that the same observation applies to Niagara Mohawk. Niagara Mohawk argued that there is absolutely nothing in the record to show that CATV operators are charged for correcting Niagara Mohawk violations.

Reply by the Association

In its reply brief, the Petitioner omitted further reference to Niagara Mohawk; arguments were limited to NYT's practices and policies.20/ In the course of its reply brief the Association accused NYT of distorting the record, and specific exception was taken to isolated factual representations. The Petitioner argued that there was no testimony of record as to the reasons why NYT changed its policy on guying and anchoring. With reference to NYT's position that the employees of CATV companies can participate in surveys, the Petitioner argued that CATV companies merely receive an estimate of makeready work without ever having had an opportunity to participate.

It was also argued that there was no basis in the record to conclude that utility ratepayers would ever subsidize CATV operators. With specific reference to Exhibit 100 of the record, the Association took particular exception to NYT's contention that it has a high

20/ Comments in the Staff's reply brief were also primarily directed toward NYT's opening brief. With the exception of a few points discussed elsewhere in this Recommended Decision, the Staff's observations had been raised in its answering brief and will be discussed in that context.

accuracy rate with respect to makeready estimates.[21] In fact, the Petitioner argued, the facts of record show a very high percentage of inaccurate estimates.

As to whether NYT's practices are anti-competitive, the Association urged that NYT is anti-competitive because it will not permit private contractors to perform survey and makeready work. Referring to Jackson, the Petitioner argued that this contractor has done work on NYT plant in the past which proves that the Company does not regard its plant as sacred. It was charged that NYT's labor concerns are transparent inasmuch as the contract between NYT and its union merely states that work will not be sent out on a contractual basis if that would cause layoffs or part-timing of employees. The Association repeated its position that the use of private contractors could result in greater cost savings on makeready work for CATV and that this practice could be pursued without harm to the Company's plant or harm to NYT's relations with its union.

Positions of the Staff and Other Utilities on Issues Raised by the Association

The Staff made a very brief statement with respect to the issues raised by the Association in its opening brief. In effect, the Staff stated that it did not agree with all positions taken by the Petitioner, and the Staff stated that it did not believe that all

21/ On reply, the Staff questioned NYT's method of computing accuracy by "a total dollar basis." The Staff argued that the accuracy of estimates should be judged on a "job-by-job" basis.

arguments in that brief fairly stated the relationships between CATV operators and the utilities. The Staff further said, however, that it also believed that utilities should accommodate CATV operators to the extent possible consistent with their public service obligations.

The answering briefs filed by the balance of the utility parties had common features. For example, jurisdictional arguments were again cited and it was argued that the Association had not supported its complaints on the record. This was the thrust of briefs filed by Consolidated Edison, LILCO, and General Telephone.

RG&E argued that the Association had failed to demonstrate that the utility priority of service provisions are unreasonable. It was urged that the utilities do not offer a luxury service, but are under a statutory mandate to offer safe and adequate service with respect to their basic undertakings.

Charging that the CATV operators, through the Petitioner, are here pursuing their own business interests, RG&E went on to argue that no evidence or testimony concerning absolute economic harm was offered. RG&E noted that no CATV company financial statements were offered into evidence and no impoverished rates of return were the subject of testimony. It was further noted that while a request was made to have CATV company financial statements provided, the Association resisted such efforts on the basis that this information was confidentia Agreeing that there are frictions between the utilities and CATV operators, RG&E expressed its opinion that such frictions are natural in a free economy.

In its answering brief RTC referred to a portion of the testimony of John Lazor of People's Cable Corporation which operates in RTC's territory. It was observed that the portion cited revealed good relations between the CATV company and RTC. RTC supported the NYT pole attachment provision calling for periodic inspections. RTC stated that it has this type of provision in its contract and has received no complaints. In commenting on NYT's 10 percent profit, RTC found such a practice to be proper because without it utility resources would be diverted from profitable endeavors or there would be an improper subsidization of CATV.

Fully supportive of the general utility position were the answering comments filed by Central Hudson. Central Hudson pointed to the examination of certain CATV witnesses with respect to the relationship between their companies and Central Hudson; favorable comments were made by those witnesses.[22/] Central Hudson argued that the Petitioner should not be allowed to impugn all utilities by presenting selective evidence as to the practices of one or two. As to the "abuses" charged against NYT and Niagara Mohawk, Central Hudson argued that these turned out to be nothing more than safeguards put in agreements to protect primary service obligations.

Commenting on the scope of the Petitioner's case, Orange & Rockland noted that of the 12 utilities involved, the Association made no case against 10 utilities with respect to pole attachment agreements

22/ A similar observation was made by Orange & Rockland as to its relationship with CATV.

and with respect to joint buried and underground agreements the Association made no case and offered no proof against any utility. Orange & Rockland observed that the Association withdrew its case concerning utility practices and procedures relating to joint buried agreements.

Orange & Rockland stated its belief that CATV use should be considered as being secondary to utility use. While it believes that pole plant should not be duplicated, Orange & Rockland argued that multiple use must be administered on a public service priority basis. Orange & Rockland would view CATV use as an accommodation only. Orange & Rockland extended this philosophy into the area of survey and makeready work. It was stated that Orange & Rockland makes every good-faith attempt to accommodate CATV needs, but it is sometimes necessary to schedule CATV on a secondary basis because of public service obligations.

Issues Raised by the Staff in its Answering Brief

In addition to the brief and general comments made by the Staff with respect to the position taken by the Association in its opening brief, the Staff presented a number of recommendations which were drawn from the testimony of Staff Witness Douglas Sieg. The Staff position assumed that the PSC has jurisdiction to direct changes and modifications in the pole attachment agreements which were at issue in this proceeding. Assuming jurisdiction, therefore, the Staff

presented a number of proposals which, in its words, would provide a more equitable relationship and resolution of the controversy here outstanding. The Staff proposals are essentially as follows:

1. There should be a flat rate for survey and makeready work. Under the Staff proposal, the utility would charge a flat rate per pole for survey and makeready work done at the request of CATV operators. This flat rate would cover all poles being licensed with the exception of those being replaced. The rate would be designed to recover those costs incurred by the licensor for survey and makeready work and inspections. The Staff believed that the flat rate would lessen administrative burdens, eliminate problems relating to the accuracy of makeready estimates, and would inform the CATV companies in advance of expenses that will be incurred.

2. The CATV operators should be required to take a joint-ownership interest in those poles that are being replaced. Under the Staff proposal, the cost to the CATV operator per pole replacement would be the cost of the pole plus the cost of labor for placing the pole less a depreciation allowance on the existing pole.

3. With respect to guying and anchoring the Staff had two proposals to make. In those situations where spare capacity exists on an existing utility guy and/or anchor, that capacity should be made available to the CATV operator at an annual rental. The spare capacity would then be revenue producing to the benefit of ratepayers and it would eliminate the need for duplicate facilities which, inter alia,

would have environmental benefits. With respect to those situations where there is no spare capacity to accommodate the addition of CATV facilities to an existing utility pole line or to accommodate additional utility plant on poles already supporting CATV facilities which are held in balance by utility anchors and/or guys, then a different situation arises. Permission of the property owner would be required which could be obtained by the utility or the CATV operator depending upon circumstances. The Staff believes it is reasonable for the utility to assist CATV in obtaining permission providing the CATV operator has tried and been unable to obtain that permission.

4. With respect to the scheduling of survey and makeready work, the Staff has proposed a program whereby an application for licensing of up to 2,000 poles in any one district could be submitted to NYT at least five months prior to the desired date of physical attachment to NYT poles. Work in excess of 2,000 poles would require notification further in advance, but once a time interval was agreed to both parties could guarantee performance. The Staff believes that an agreement of this sort would eliminate CATV objections to the failure of NYT to guarantee delivery of a specified number of poles in a specified period of time. The Staff further believes that the PSC should direct the utilities to negotiate minimum survey and makeready work schedules with CATV companies. The schedule could be agreed upon by the parties and comprise a portion of the attachment agreement between CATV companies and the utilities.

5. The Staff has recognized the valuable role that can be played by private contractors in performing survey and makeready work, but the Staff further believes that the final decision as to who does survey and makeready work must remain with the owner of the poles.

6. With respect to profit from makeready work, the Staff addressed itself to NYT's 10 percent policy. Again referring to the testimony of Witness Sieg, the Staff noted that since NYT charges a fully-loaded rate, it is, in effect, computing cost on a fully-allocated basis. It was the Staff's position that a profit factor in addition to fully-allocated costs is unwarranted.

As a final point, the Staff argued that the PSC should order reformation of pole attachment agreements in accordance with the Staff's recommendations.

Positions of the Other Parties on Issues Raised by the Staff

In its reply brief, the Association voiced its general agreement with Staff recommendations, but noted that it did not endorse all. The Association specifically noted that it did not endorse the recommendation with respect to flat rates, but it failed to say what other Staff recommendations were not endorsed.

The utilities who replied to the Staff proposals shared two positions. All were opposed to those proposals on the merits, and all took exception to the Staff's rulemaking approach in a case principally designed to dispose of specific CATV complaints. In commenting on the evidence introduced by the Staff, Orange & Rockland

noted that Staff Witness Sieg has experience in the area of telephone regulation, but is not familiar with electric distribution systems. It was also pointed out that electric companies were never approached by the Staff with respect to operating difficulties or cost problems. It was also noted that the record was devoid of industry points of view with respect to the proposals raised by the Staff.

As to the flat rate proposal, NYT stated that it was not categorically opposed to the possibility, but it argued that the record does not permit an evaluation of this proposal and it is also contrary to established ratemaking principles. Niagara Mohawk, among others, noted that flat rates could involve cross-subsidization among CATV operators and being based on the previous year's cost could result in delay in recovering actual costs by the utilities.[23/] Several utilities expressed doubt that the flat rate concept would actually offer the administrative relief seen by the Staff. Niagara Mohawk noted that no problems arose under its policy of giving estimates on the spot and collecting actual charges after the work had been accomplished. General Telephone argued that the flat rate proposal would be particularly inappropriate for small companies with little CATV work. Noting its own situation, General Telephone stated that CATV work is done on a piecemeal basis, and in some years no such work is performed. Central Hudson argued that flat rates could be manipulated by CATV operators by the scheduling of less expensive makeready work in one year and more expensive makeready in the next year.

23/ Under the proposal the Staff contemplated a flat rate based upon the previous years' costs; rates would vary from year to year depending on costs and efficiency.

With respect to pole ownership by CATV operators, it was noted that CATV has expressed no desire to participate as a joint owner and would probably resist the opportunity in the future. Central Hudson stated that ownership would be feasible only if the CATV operators were financially capable of being able to share in the cost of maintenance. NYT felt that the Staff properly endorsed a concept of having CATV purchase an interest in pole plant, but the Company further felt that the Staff fell short of advocating an equitable and workable pole ownership ratio. As different parties pointed out, the incidence of pole replacement because of CATV attachments is approximately one out of every nineteen hundred poles. NYT argued that the adoption of the Staff proposal would create the administrative burdens of tri-party agreements for only a negligible interest by CATV. From NYT's standpoint the Staff proposal would not permit enough capital saving to outweigh administrative costs.

With respect to the Staff proposals on guying and anchoring, NYT noted that it would be willing to share guys and anchors but it further noted that the Staff proposal failed to comprehend the full significance of right-of-way considerations. NYT argued that CATV operators want to employ utility guys and anchors only to avoid the need of obtaining landowner permission. In cases where permission was not a problem, NYT thought that CATV companies would prefer to place their own guys and anchors. NYT repeated its view that the only solution would be to have CATV companies obtain landowner permission in advance, perhaps through the use of specialized companies whose business is obtaining rights-of-way for clients.